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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/810,815	03/16/2001	Andreas Burgard	00/067 NUT	6739

7590 12/30/2002  
ProPat LLC  
CROSBY ROAD  
Charlotte, NC 28211

EXAMINER

WALLS, DIONNE A

ART UNIT	PAPER NUMBER
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1731

8

DATE MAILED: 12/30/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/810,815

Applicant(s)

BURGARD ET AL.

Examiner

Dionne A. Walls

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites "acesulfame or an other oxathiazinone sweetener" and "cyclamate or an other sulfamate sweetener"; however, it is not clear when one has the "other" sweetener. It also appears that these recitations are first reciting a specific sweetener and then reciting a broad class of sweeteners of which the specifically recited sweetener is a part, thus creating confusion over the intended scope of the claims.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/04822 in view of Mozda (US. Pat. No. 4,753,800).

WO 99/04822 discloses 1:1 molar ratios of salts of a sweetener (aspartame, for instance) and an unpleasantly tasting pharmaceutical (see page 2). While, there may

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be no specific teaching that nicotine may be the unpleasant-tasting drug from which a salt can be formed with the sweetener, WO 99/04822 does state that the term "drug substance", as disclosed in its specification, includes active ingredients of any human drugs, whose organoleptic properties, especially taste after taste, are unpleasant for patients (see lines 5-14). Further, Mozda states that nicotine is an unpleasant tasting drug, used as a medicament in the pharmaceutical/medical area for stimulating the nervous system (col. 3, lines 51-54, and col. 4, line 12). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to utilize as the drug substance, from which to form (with a sweetener) a salt compound, nicotine since it is a drug known to have an unpleasant taste, as evidenced by the Mozda disclosure.

Regarding claim 4, while the product of WO 99/04822 modified by Mozda may not specifically state the use of aspartame-K, it would have been obvious to one having ordinary skill in the art at the time of the invention to utilize the potassium salt form of the aspartame sweetener since its use is conventional and widely-used in many arts.

Regarding claim 10, while WO 99/04822 modified by Mozda may not specifically state that the compound of its invention is a liquid or solid preparation in the form of a chewing gum, chewing tablet or compressed formulation, WO 99/04822 does state, that generally, an oral dosage in liquid suspension, tablet or capsule form is favored since it allows for simple and cheap dosage (page 1, lines 11-24). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to produce the pharmaceutical compound of the combined references in a liquid or solid (i.e. tablet) since producing medicaments, for ingestion, in this form is conventional.

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***Response to Arguments***

5. Applicant's arguments with respect to claims 1-4 and 10 are have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne A. Walls whose telephone number is (703) 305-0933. The examiner can normally be reached on Mon-Fri, 7AM - 4:30PM (Every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on (703) 308-1164. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

A handwritten signature in black ink that reads "Dionne A. Walls". The signature is written in a cursive, flowing style. A horizontal line extends from the end of the signature to the right.

Dionne A. Walls  
December 22, 2002